

United States Department of Agriculture



Natural Resources Conservation Service
655 Parfet Street, Room E200C
Lakewood, Colorado 80215

VIA ELECTRONIC MAIL

COLORADO BULLETIN NO.: CO-440-06-02

Date: April 20, 2006

SUBJECT: PGM – Completion or Termination of Fiscal Year (FY) 2001
Soil and Water Conservation Assistance (SWCA) Contracts

TO: Area Conservationists (AC)
District Conservationists (DC)
Area Resource Conservationists - Programs (ARC-P)

PURPOSE: To inform SWCA Program Managers of the required action
for completion, cancellation or termination of FY 2001 SWCA contracts.

EXPIRATION DATE: September 30, 2006

ACTION REQUIRED BY: May 1, 2006
July 1, 2006
September 1, 2006

A recent review of the FY 2001 Soil and Water Conservation Assistance (SWCA) contracts indicates a large number of active contracts have more than 75 percent of the original obligation unpaid. The attachment, showing SWCA contracts by county, summarizes the current status of “open obligations” in Colorado.

In order to consolidate Agency gains and focus technical assistance funds, the Agency has chosen a course of action for closing out these contracts. The emphasis should be placed on getting all conservation systems applied during the months ahead. However, we also recognize that cancellation or termination may be necessary where participants are unable or unwilling to meet the contract requirements.

Action by May 1, 2006: Field offices must review all active FY 2001 SWCA contracts and provide each participant a written notification of remaining options. The attached “Initial” letter is to be used for this notification. Field offices should schedule additional follow-up if the participant is not responsive to this notice.

The following options will be offered to each active FY 2001 contract participant. Each contract participant may elect one of the following options and must respond by **July 1, 2006**, indicating his/her preferred course of action.

1. Modify his/her contract as necessary to implement all remaining practices in the contract by **September 1, 2007**.
2. Provide a written request for contract cancellation along with a justification for this request by **July 1, 2006**.
 - a. **District Conservationist will complete Natural Resources Conservation Service (NRCS) -LTP-153 for contract cancellation requests** (according to Amended Colorado Bulletin CO-300-06-02 dated November 21, 2005)
 - b. **District Conservationist will also submit the LTP-153 to the Assistant State Conservationist for Programs (ASTC-P) by July 1, 2006**, in order for the State Conservationist to prepare appropriate cancellation letters.
3. If a contract participant does not respond to NRCS by July 1, 2006, NRCS will initiate termination of the contract if implementation of the contract **is not** on schedule and the participant has not requested contract cancellation.
 - a. **District Conservationist will complete NRCS-LTP-153 contract termination** (according to Amended Colorado Bulletin CO-300-06-02 dated November 21, 2005)
 - b. **District Conservationist will also submit the LTP-153 to the ASTC-P by July 1, 2006**, in order for the State Conservationist to prepare appropriate termination letters. Termination is an “adverse action,” so a notification with appeal rights will be required.

Each contract participant that does not respond to the initial letter will receive the attached “Second” letter, that states his/her contract is in the process of being terminated. This letter will provide details to the participant on cost recovery provisions and will provide the participant with **limited appeal rights**. (Send via certified mail, return receipt requested.)

It is important for all employees to understand the difference between contract cancellation and contract termination. Refer to the Conservation Programs Manual (CPM) Part 512.57 for policy guidance of these actions.

- **Contract cancellation (7 CFR 1465.25(b)(1) can result in repayment of previously issued cost-share disbursements.**
- **Contract termination must be for cause and may result in repayment plus assessment of liquidated damages (7 CFR 1465.25(b)(2).**

In terminating contracts, States are to apply cost recovery **requirements** as stated in the participant’s SWCA contract appendix **and the program regulations at 7 CFR 1465.25**, unless a partial or complete waiver has been approved by the State Conservationist (**7 CFR 1465.25(b)(3)**). Refer to CPM Part 512.58 for policy guidance on cost recovery.

Waivers must be supported by evidence of either a good faith effort to apply the terms and conditions of the contract or hardships beyond the control of the participant.

The language for liquidated damages from page 4, item 8 of the applicable SWCA Appendix for FY 2001 SWCA contracts reads as follows:

*“It is mutually agreed that in the event the approved SWCA contract is breached by the participant, CCC will suffer substantial damages that **may not be possible to quantify with certainty**¹. Therefore, in addition to the refund of payments received plus interest due, for breach of contract prescribed in this contract, the participant agrees to pay an amount equal to the product obtained by multiplying: (1) 25 percent by, (2) the sum of **payments disbursed** for practices specified on Form CCC-1245 that have been performed subject to the contract, as liquidated damages and not as a penalty.”*

SWCA contract participants who do not timely respond to the second letter will receive the “Third” letter (attached) indicating that their contract has been terminated.

Participant Notification of Action:

Attached are five (5) letters for use in notifying contract participants of the options for addressing the completion of their contract responsibilities. These letters are as follows:

- An “Initial” letter (**DC prepares**) to FY 2001 contract participants providing two options from which to choose their preferred course of action.
- A “Second” letter (**STC prepares**) will be sent to contract participants that **did not respond** to the initial letter. This letter will state that their contract is now in the process of being terminated and provide details to the participant on cost recovery provisions along with *limited appeal rights* for the participant. **This letter must be sent by certified mail, return receipt requested.**
- A “Third” letter (**STC prepares**) (if participant has not responded to the second letter) indicating that his/her contract has been terminated.
- A “Fourth” letter (**STC prepares**) will be sent to contract participants that **did respond** to the initial letter and have requested cancellation of their contract.
- A “Fifth” letter (**STC prepares**) will be sent to contract participants confirming, by mutual agreement, that their contract has been cancelled.

A list of active contracts is attached indicating county location.

¹ The assessment of liquidated damages is premised on the fact that overall damages suffered by CCC and NRCS are not readily quantifiable. Therefore, DO NOT try to quantify the amount of damages. Any reductions in the total amount of liquidated damages and/or repayment of previously disbursed cost-share payments should be based on the percent that the contract cancellation or termination was impacted by good faith implementation and/or hardship and not have as its basis any determination of hours or dollars lost due to the cancellation or termination.

Contracts identified on the list that are complete, expired, cancelled or terminated need to have the following information noted and returned to the ASTC-P by May 1, 2006. Notation needs to be made of contract status and the dollar amount of any excess funds left in the contract after all CIN's have been certified and paid. Indicate dollar amount needing to be released.

A handwritten signature in dark ink, reading "Edward M. Biggers, Jr." in a cursive script. The signature is written on a light-colored, slightly textured background.

EDWARD M. BIGGERS, JR.
Acting State Conservationist

Attachments

DIST: A. F, ARC-P